

State West Virginia

ATTACHMENT 12-A
Page 1

1.2 Organization for Administration

ATTACHMENT 1.2-A

The Bureau for Medical Services, the single State agency, is the Office of State Government responsible for the administration of the plan under Title XIX of the Social Security Act. Attached is an organizational chart.

The Bureau for Medical Services has the authority to make rules and regulations that it follows in administering the plan or that are binding upon local agencies that administer the plan.

TN No. 95-06

Supersedes

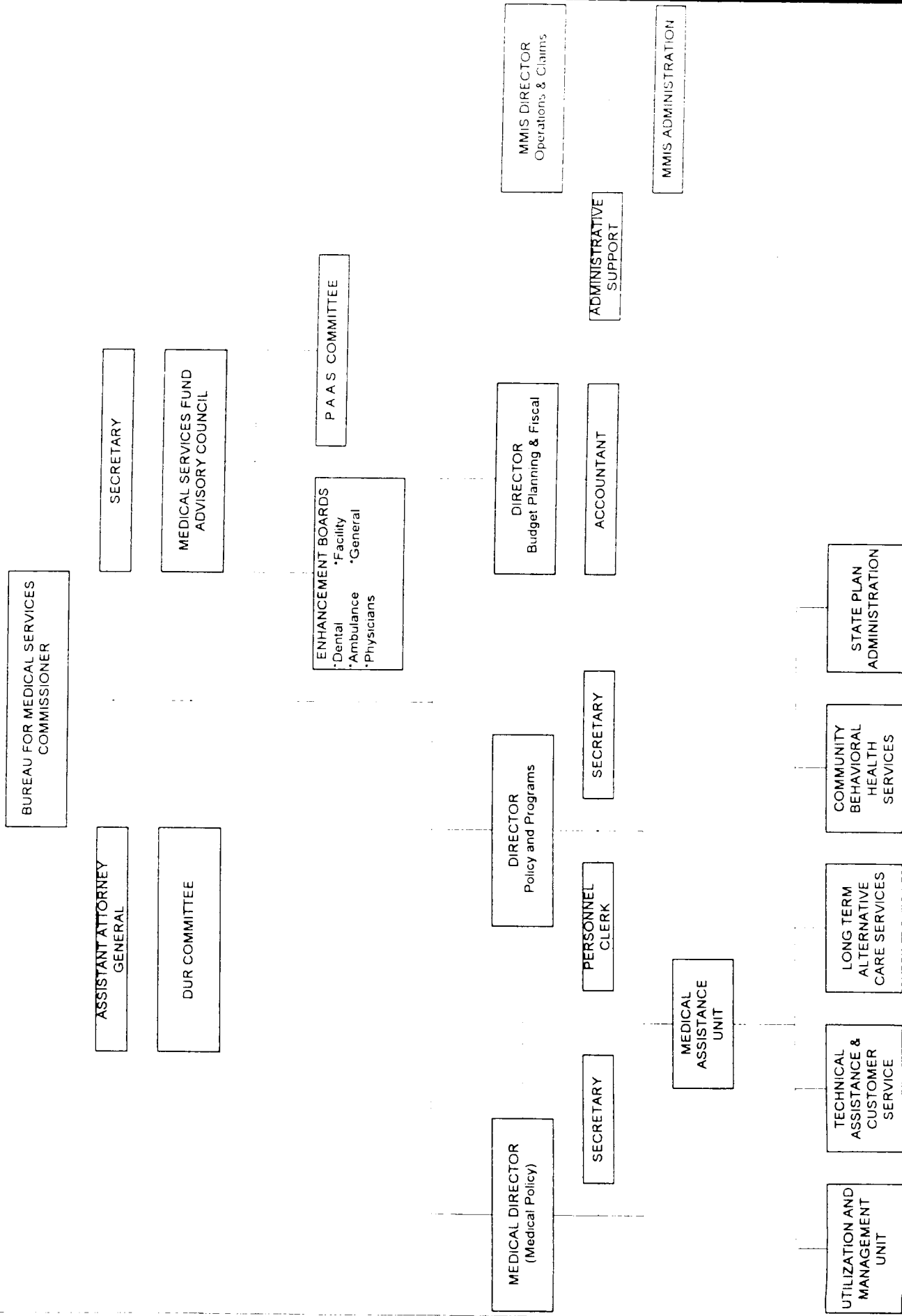
TN No. 94-05

Approval Date

MAY 08 1995

Effective Date

MAY 01 1995



and has not sufficient income or other resources to provide for such need as determined by the department.

(h) The term "domiciled in this State" shall mean being physically present in West Virginia accompanied by an intention to remain in West Virginia for an indefinite period of time, and to make West Virginia his or her permanent home. The department may by rules and regulations supplement the foregoing definition of the term "domiciled in this State," but not in such a manner as would be inconsistent with federal laws, rules, and regulations applicable to and governing federal-state assistance.

(i) The term "medical services" means medical, surgical, dental and nursing services, and other remedial services recognized by law, in the home, office, hospital, clinic and any other suitable place, provided or prescribed by persons permitted or authorized by law to give such services; such services to include drugs and medical supplies, appliances, laboratory, diagnostic and therapeutic services, nursing home and convalescent care and such other medical services and supplies as may be prescribed by such persons.

(j) The term "general relief" shall mean cash or its equivalent in services or commodities expended for care and assistance to an indigent person other than for care in a county infirmary, child shelter, or similar institution. (1936, 1st Ex. Sess., c. 1; 1937, c. 72; 1941, c. 74; 1953, c. 143; 1966, c. 49; 1970, c. 78; 1972, c. 127.)

ARTICLE 2.

DEPARTMENT OF WELFARE AND OFFICE OF COMMISSIONER OF WELFARE; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

Sec. 9-2-1. Continuation of department of welfare.	Sec. 9-2-4. Organization of department of welfare.
9-2-2. Commissioner to be administrative head of department; appointment, qualifications, etc.; not to hold other office or engage in political activity.	9-2-5. Responsibility and powers of department; information and data to be supplied by other agencies.
9-2-3. Acceptance of federal-state assistance and federal assistance.	9-2-6. Powers of commissioner.
	9-2-7. State's participation in federal work incentive program.

Revision of chapter. — See note under the same catchline at the beginning of this chapter.

§ 9-2-1. Continuation of department of welfare.

The state department of welfare, first created as the state department of public assistance by chapter one, acts of the legislature, first extraordinary session, one thousand nine hundred thirty-six, and later reconstituted as the

SEP 7 1978

state department of welfare by chapter one hundred ten, acts of the legislature, regular session, one thousand nine hundred sixty-one, shall be continued and organized as provided and authorized by this chapter and shall have those powers and duties respecting the administration of the welfare assistance programs as authorized, granted and imposed by this chapter and elsewhere by law. (1936, 1st Ex. Sess., c. 1; 1961, c. 110; 1970, c. 78.)

§ 9-2-2. Commissioner to be administrative head of department; appointment, qualifications, etc.; not to hold other office or engage in political activity.

The chief executive officer and administrative head of the department shall be the commissioner of welfare, who shall be appointed and compensated, and shall serve, as provided by section two-a [§ 6-7-2a], article seven, chapter six of this Code.

The commissioner shall be selected with special reference and consideration given to his training, experience, capacity and interest in or relating to the welfare assistance programs administered by the state department of welfare.

Before entering upon the duties of his office, the commissioner shall take and subscribe to the oath of office prescribed by section 5, article IV of the state Constitution and shall execute a corporate surety bond in the sum of fifteen thousand dollars for the faithful performance of his duties. The bond shall be in the form prescribed by the attorney general and approved by the governor, and both the certificate of the oath and the bond shall be filed with the secretary of state. Premiums upon the bond shall be paid out of the funds of the department.

The commissioner shall not be a candidate for, or hold, any other public office or public employment under the federal government or upon the government of this State or any of its political subdivisions, or be a member or officer of any political party committee, or serve as an election official, or engage in any political activity, other than to vote, in behalf of, or in opposition to, any candidate, political party or public issue involved in an election. Any violation by the commissioner of the provisions of this paragraph shall automatically vacate his appointment as commissioner. (1936, 1st Ex. Sess., c. 1; 1961, c. 110; 1970, c. 78.)

§ 9-2-3. Acceptance of federal-state assistance and federal assistance.

The State assents to the purposes of federal-state assistance and federal assistance, accepts federal appropriations and other forms of assistance made under or pursuant thereto, and authorizes the receipt of such appropriations into the state treasury and the receipt of other forms of assistance by the department for expenditure, disbursement, and distribution by the department in accordance with the provisions of this chapter and the conditions imposed by applicable federal laws, rules and regulations. (1936, 1st Ex. Sess., c. 1; 1947, c. 146; 1970, c. 78.)

Department authorized to accept federal agricultural commodities. — The department of welfare has authority to accept from the

United States Department of Agriculture commodities for distribution to needy individuals. 45 Op. Att'y Gen. 753 (1954).

§ 9-2-4. Organization of department of welfare.

Within limits of state appropriations and federal grants and subject to provisions of state and federal laws, rules and regulations, the commissioner shall organize the department into such offices, divisions, agencies and other administrative units, and, consistent with the requirements of article six [§ 29-6-1 et seq.], chapter twenty-nine of this Code, shall appoint and employ for the department such deputies, assistants and employees, as may in his judgment be necessary or desirable to carry out fully and in an orderly, efficient and economical manner the powers, duties and responsibilities of the department and of his office. (1936, 1st Ex. Sess., c. 1; 1941, c. 74; 1970, c. 78.)

The right to hire necessarily includes the right to discharge, in the absence of any provision to the contrary. State ex rel. Lippert v. Sims, 143 W.Va. 542, 103 S.E.2d 533 (1958).

§ 9-2-5. Responsibility and powers of department; information and data to be supplied by other agencies.

The department is charged with the responsibility of administering for the State the welfare assistance programs, for which responsibility it shall have (1) all powers, not inconsistent with state law, as may be necessary for this State to obtain maximum federal funds made available for federal-state assistance within whatever limits or restrictions may be imposed by, or may exist by reason of the amount of state funds appropriated for such assistance under, the state's budget act and supplementary appropriation acts, and (2) all powers, not inconsistent with state law, as may be necessary for the disbursement and distribution of welfare assistance to those persons qualified therefor in as prompt, fair, orderly, efficient and economical manner as possible.

Notwithstanding any other provision of this Code to the contrary, each department, agency, commission or board of state government shall make available to the department of welfare such information and data as each such department, agency, commission or board may collect about any applicant for or recipient of any type of federal or state assistance upon such terms as may be prescribed by the governor, if such information and data would be relevant in determining whether such applicant or recipient is qualified or eligible for any such assistance, and after such information and data have been obtained by the department of welfare, the same shall be used only by such department of welfare in carrying out and discharging its powers, duties and responsibilities. (1970, c. 78; 1972, c. 128.)

§ 9-2-6. Powers of commissioner.

Within limits of state appropriations and federal grants and subject to provisions of state and federal laws and regulations, the commissioner, in addition to all other powers, duties and responsibilities granted and assigned to

SEP 7 1978

(7) Provide at department expense a program of continuing professional, technical, and specialized instruction for the personnel of the department.

(8) Pay from available funds all or part of the reasonable expenses incurred by a person newly employed by the department in moving his household furniture, effects and immediate family from his place of residence in this State to his place of employment in this State; and to pay from available funds all or part of the reasonable expenses incurred by a department employee in moving his household furniture, effects and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interests of the State, but no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months or for any movement other than from one place of employment in this State to another place of employment in this State.

(9) Establish and maintain such institutions as are necessary for the temporary care, maintenance, and training of children and other persons. ✓

(10) Prepare and submit state plans which will meet the requirements of federal laws, rules and regulations governing federal-state assistance and federal assistance and which are not inconsistent with state law.

(11) Organize within the department a board of review, consisting of a chairman appointed by the commissioner and as many assistants or employees of the department as may be determined by the commissioner and as may be required by federal laws, rules and regulations respecting state assistance, federal-state assistance and federal assistance, such board of review to have such powers of a review nature and such additional powers as may be granted to it by the commissioner and as may be required by federal laws, rules and regulations respecting federal-state assistance and federal assistance.

(12) Provide by rules and regulations such review and appeal procedures within the department of welfare as may be required by applicable federal laws, rules and regulations respecting state assistance, federal-state assistance and federal assistance and as will provide applicants for, and recipients of all, classes of welfare assistance an opportunity to be heard by the board of review, a member thereof, or individuals designated by said board, upon claims involving denial, reduction, closure, delay, or other action or inaction pertaining to welfare assistance.

(13) Provided by rules and regulations, consistent with requirements of applicable federal laws, rules and regulations, application forms and application procedures for the various classes of welfare assistance.

(14) Provide locations for making applications for the various classes of welfare assistance.

(15) Provide a citizen or group of citizens an opportunity to file objections and to be heard upon objections to the grant of any class of welfare assistance. *

(16) Delegate to the personnel of the department all powers and duties vested in the commissioner, except the power and authority to sign contracts and agreements, but the commissioner shall remain responsible therefor.

(17) Make such reports, in such form and containing such information, as may be required by applicable federal laws, rules and regulations respecting federal-state assistance and federal assistance.

SEP 7 1978

that office in this chapter and elsewhere by law, is authorized and empowered to:

(1) Promulgate, amend, revise, and rescind department rules and regulations respecting the organization and government of the department and the execution and administration of those powers, duties and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the commissioner.

(2) Promulgate, amend, revise and rescind department rules and regulations respecting qualifications for receiving the different classes of welfare assistance consistent with or permitted by federal laws, rules and regulations, but not inconsistent with state law.

(3) Obtain by purchase or lease such grounds, buildings, office or other space, equipment, facilities and services, as may be necessary for the execution and administration of those powers, duties and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the commissioner.

(4) Sign and execute in the name of the State by the state department of welfare any contract or agreement with the federal government or its agencies, other states, political subdivisions of this State, corporations, associations, partnerships or individuals.

(5) Establish such special funds as may be required by the federal Social Security Act, as amended, or by any other act or acts of Congress, in order for this State to take full advantage of the benefits and provisions thereof relating to the federal-state assistance and federal assistance programs administered by the department, and to make payments into and disbursements out of any such special fund or funds in accordance with the requirements of the federal Social Security Act, as amended, or any other act or acts of Congress, and in accordance with applicable state law and the objects and purposes of this chapter. In addition, the state department of welfare, through the commissioner, is hereby authorized to accept any and all gifts or grants, whether in money, land, services, or materials, which gift or gifts, if in the form of moneys, shall be placed in a separate fund and expended solely for the purpose of welfare programs. No part of this special fund shall revert to the general revenue funds of this State. No expenses incurred pursuant to this special fund shall be a charge against the general funds of this State.

(6) Establish, in addition to the state advisory board and advisory council provided for in this chapter, such county advisory boards as may in his judgment be necessary or desirable to advise the department and the commissioner with respect to the total welfare assistance program administered by the department or any phase thereof, such additional board or boards to consist of such number of persons, professional, lay, or both, and to have such responsibilities of an advisory nature, as the commissioner may determine. However, (1) the members of any such additional board or boards shall not be compensated for their services but shall be entitled to reimbursement for actual expenses incurred in the performance of their duties as a member of any such board; and (2) the members of any such additional board or boards shall serve at the will and pleasure of the commissioner.

(18) Invoke any legal, equitable or special remedies for the enforcement of the provisions of this chapter. (1936, 1st Ex. Sess., c. 1; 1939, c. 106; 1941, c. 74; 1953, c. 143; 1970, c. 78.)

Expenditure of funds for training of employee is not gift of public funds. — The expenditure by the state commissioner of the department of welfare of funds paid into the state treasury by the federal government, for the purpose of enabling an employee of the department to obtain technical and specialized training in child welfare services, pursuant to a plan adopted and approved by the state and federal governments, and in accordance with legislation enacted by the state legislature and the Congress, does not constitute a gift of public funds for a private purpose in violation of W. Va. Const., art. X. State ex rel. Roth v. Sims, 139 W. Va. 795, 81 S.E.2d 670 (1954).

And mandamus will lie to compel state

auditor to honor requisition. — It is the clear legal duty of the auditor of this State to honor a requisition drawn by the state commissioner of the department of welfare, against funds paid into the state treasury by the federal government, for payment to an employee of the department for the purpose of enabling the employee to obtain technical and specialized training in child welfare services, when such requisition is drawn in accordance with a plan adopted and approved by the state and federal governments pursuant to legislation appertaining thereto, and mandamus will lie to compel the auditor to perform such duty. State ex rel. Roth v. Sims, 139 W. Va. 795, 81 S.E.2d 670 (1954).

§ 9-2-7. State's participation in federal work incentive program.

The State of West Virginia hereby acknowledges that the Congress of the United States has enacted legislation amending the Social Security Act to permit states to establish work incentive programs. The commissioner is hereby authorized to transfer moneys from any appropriate public assistance grant account under his control to the special fund, administered by the United States secretary of labor, created by such amendments. Any moneys transferred by the commissioner to the aforesaid special fund shall be considered as money expended for welfare grants. The commissioner is further empowered to promulgate rules, establish plans and perform any other acts necessary to implement this state's participation in the aforesaid work incentive program.

The commissioner is directed and authorized to cooperate and coordinate his activities in regard to such program with the commissioner of the West Virginia department of employment security as contemplated by section sixteen-a [§ 21A-2-16a], article two, chapter twenty-one-A of the Code of West Virginia. (1968, 2nd Ex. Sess., c. 9; 1970, c. 78.)

Payments under program constitute wages. — Wages received directly from the employer by participants in the work incentive program are

really wages, not welfare grants, and as such are not exempted from suggestion by § 38-5B-12. Op. Att'y Gen., May 8, 1969.

ARTICLE 3.

APPLICATION FOR AND GRANTING OF ASSISTANCE.

Sec.

9-3-1. Application for and granting of federal-state or federal assistance.

9-3-2. Application for and granting of state assistance.

Sec.

9-3-3. Making application, investigation and grant.

Revision of chapter. — See note under the same catchline at the beginning of this chapter.